



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,721	11/13/2001	Yoshiaki Komma	10873.850US01	2720

7590 03/13/2006

HAMRE SCHUMANN MUELLER & LARSON pc  
P O BOX 2902 0902  
MINNEAPOLIS, MN 55402

EXAMINER
----------

PSITOS, ARISTOTELIS M

ART UNIT	PAPER NUMBER
----------	--------------

2656

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/010,721

Applicant(s)

KOMMA ET AL.

Examiner

Aristotelis M. Psitos

Art Unit

2656

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see next page. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 7 and 15-19.  
Claim(s) withdrawn from consideration: 6.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see next page.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Aristotelis M Psitos  
Primary Examiner  
Art Unit: 2656

Art Unit: 2656

Advisory action

Applicants' response of 2/21/06 has been considered with the following results.

Amendments after final are NOT entered in part – see MPEP § 714.16 (e).

Nevertheless, the following observations are noted.

a) The amendments to the specification would be entered if separately provided/introduced.

b) The amendments canceling claims 6,7 and 15 would also be entered if separately provided/introduced since this would reduce the issues.

c) The amendments introducing:

1) the phrase “.... The diffraction grating body is formed of a single base material, and ...”,

2) “... single base material ...”,

3) the ultimate paragraph in claims referring to the photo detecting portion, would also be permitted if introduced separately.

The amendments introducing the phrase

a) “ .... Provided as a separate element from the diffraction grating body, the diffraction means being arranged ....”,

WOULD NOT BE ENTERED.

The examiner cannot readily map this limitation with the elected species and the specification as originally filed. Hence sections 3a and 3b are raised and would take more than a cursory review to reconcile.

With respect to the arguments presented by applicants in the above noted response of 2/21/06, the following points are made:

a) The objections of the claims as previously presented would not only be repeated since the proposed amendments to the claims on this issue have not been entered.

b) The rejection under 112 paragraph 1 and paragraph two as indicated on pages 3 and 4 of the previous OA is repeated – since no amendments to the either the specification or the claims have been entered.

Art Unit: 2656

c) With respect to the arguments presented against the references, such are not convincing, because:

I: With respect to the argued configuration A:

The examiner respectfully disagrees – see the description of figures 7, 8, 9 or 10 in Funato.

The claimed spacings d1 and d2 although not noted in these figures is present.

II: With respect to the argued configuration B:

The examiner respectfully disagrees.

The material of the diffraction grating body is from the selected materials. The arguments focusing upon the height requirements as defined, i.e.,  $h = \lambda / (n_1 - 1)$  is repeated – see the analysis with respect to col. 7 line 62 to col. 8 line 65. It is described therein that the thin film need not be present. Hence the examiner interprets the base material – selected from one of the claimed group of materials is meet. If such is met, then the function with respect to the height requirement is also present since the concave and convex limitations are present as well.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aristotelis M. Psitos whose telephone number is (571) 272-7594. The examiner can normally be reached on M-Thursday 8 - 3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne D. Bost can be reached on (571) 272-7023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Aristotelis M Psitos  
Primary Examiner

